IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 203 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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PATEL JITENDRAKUMAR JOITARAM - Appellant(s)
Versus
PATEL GOVINDBHAI AMBALAL & 1 - Defendant(s)

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Appearance :
MR VASANT S SHAH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgment Dated 31.08.1990 passed by the Court of Commissioner for Workmen's compensation, Mehsana in W.C.C. No. 48 of 1989. This appeal is for enhancement.

2. The short fact of the present case are that the appellant is an employee of the original opponent No. 1 serving as a conductor-cum-cleaner in the truck No. G.R.W. 196. On 25.03.1989 the said truck has gone at

village Ubkal. He was to tie down a rope and at that time the rope was broken and he has fallen down from the truck. As a result of this accident he sustained injuries on his hand, leg and head. He was taken the primary treatment to Kukarwada, Ta. Vijapur and thereafter he was shifted to Civil Hospital, Ahmedabad and he took treatment for a period of 25.03.1989 to 11.04.1989. Therefore he claimed a sum of Rs. 60,000/-.

3. Learned advocate for the appellant has submitted that learned Workmen Compensation Commissioner has erred in believing the income of the appellant at Rs. 150/- only when in the deposition of the appellant he stated that he is getting Rs. 600/- per month as salary and other allowances also.

3.1 He further submitted that learned W.C. Commissioner would have also take a judicial notice that in these harsh days a labour getting Rs. 20/- per day even though he comes to conclusion that the appellant is getting Rs. 150/- per month.

4. On perusal the impugned judgment and award while passing the award the Tribunal at page 5 observed as

under:

> “..... it appears that C/1 has issued a certificate that applicant was is employee as a conductor-cum-cleaner and he was paying Rs. 600/- per month. From Ex- 28 it further appears that applicant has started the service in the month of Jan.' 88. Accident occurred in the month of March 1989. so as per the certificate Ex.-28 on the date of the4 accident applicant had done the service only one year and three months, yet O/1 has stated in the deposition that applicant was serving since last three years at the time of the accident. So it appears that O/1 has tried to help applicant. Applicant has stated in his deposition that his pay was fixed Rs. 150/- in the beginning and thereafter pay was increased upto Rs. 600/-. It is also believeable that within one year and three months applicant's pay was increased from Rs. 150/- to Rs. 600/-. Opponent has stated that pay was gradually increased upto Rs. 600/-. So the evidence of the applicant and O/1 are contradictory evidence. If O/1 has increased to pay of the applicant than it is impossible to believe that within one year he had increased pay from Rs. 150/- to Rs. 600/-. When O/1 come at the time of deposition and he realise that ultimately amount should be paid by the insurance than O/1 has change his version as stated that he has paid s. 600/- to the applicant. But for it O/1 has no documentary evidence o show that he was paying Rs. 600/- per month to applicant. As the case of the applicant that he was only a conductor-cum-cleaner and for such a person O/1 paid Rs. 600/- per month that fact is not believable to anybody. Ex-28 is a certificate and in it no date id mentioned for issuing a certificate. So considering the above facts I am of the view that applicant was only get Rs. 150/- per month. 50% of the Rs. 150/- will be come at Rs. 75/-. Now relevant factor Rs. 221.37 multiplus by Rs. 75/- will be come at Rs. 17,602/-. On the amount

> applicant is entitled to get 30% as applicant has sustained the 30% permanent partial disability. So 30% will be come at Rs. 5281/-. ....”

In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter. I am in complete agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*